

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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Date 3-31-09

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MASSACHUSETTS DEVELOPMENT FINANCE  
AGENCY,  
Plaintiff,

v.

ADP MARSHALL, INC, a FLUOR DANIEL COMPANY,  
and FIREMAN'S FUND INSURANCE COMPANY,  
Defendants,

Civil Action No.:  
1:04-cv-10203-PBS

ADP MARSHALL, INC.,  
Third-Party Plaintiff,

v.

DELTA KEYSpan, INC., R & R WINDOW  
CONTRACTORS, INC., ANDOVER CONTROLS  
CORPORATION and ALLIED CONSULTING  
ENGINEERING SERVICES, INC.,  
Third-Party Defendants.

**ANSWER OF THIRD-PARTY DEFENDANT  
R & R WINDOW CONTRACTORS, INC. TO THIRD-PARTY COMPLAINT OF  
THIRD-PARTY PLAINTIFF ADP MARSHALL, INC.**

1. The Third-Party Defendant, R & R Window Contractors, Inc., is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Third-Party Plaintiff's Complaint and, therefore, denies the same.
2. The allegations contained in paragraph 2 of the Third-Party Complaint do not pertain to this third-party defendant, and thus, no response is required.
3. The allegations contained in paragraph 3 of the Third-Party Complaint do not pertain to this third-party defendant, and thus, no response is required.

4. The third-party defendant admits that R & R Window Contractors, Inc. is a Massachusetts corporation with a principal office located at One Arthur Street in East Hampton, Massachusetts.
5. The allegations contained in paragraph 5 of the Third-Party Complaint do not pertain to this third-party defendant, and thus, no response is required.
6. The allegations contained in paragraph 6 of the Third-Party Complaint do not pertain to this third-party defendant, and thus, no response is required.
7. The allegations contained in paragraph 7 of the Third-Party Complaint do not pertain to this third-party defendant, and thus, no response is required.
8. The allegations contained in paragraph 8 of the Third-Party Complaint do not pertain to this third-party defendant, and thus, no response is required.
9. The third-party defendant admits that it entered into a subcontract with the third-party plaintiff on or about April 4, 2001 for the installation of a glazed aluminum curtainwall and aluminum entrances and storefronts at the Advanced Technology and Manufacturing Center in Fall River, Massachusetts. The third-party defendant denies the remaining allegations contained in paragraph 9 of the Third-Party Complaint.
10. The allegations contained in paragraph 10 of the Third-Party Complaint do not pertain to this third-party defendant, and thus, no response is required.
11. The third-party defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Third-Party Complaint and, therefore, denies the same.
12. The third-party defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Third-Party Complaint and, therefore, denies the same.
13. The third-party defendant admits that on or about October 29, 2002 it received a faxed memorandum from the third-party plaintiff that stated that the Massachusetts Development Finance Agency had advised the third-party plaintiff that some of the windows at the Advanced Technology and Manufacturing Center in Fall River, Massachusetts had leaked due to a latent defect.
14. The allegations contained in paragraph 14 of the Third-Party Complaint do not pertain to this third-party defendant, and thus, no response is required.

15. The third-party defendant admits that it received a copy of a September 6, 2002 letter from Whelan Associates, LLC. The third-party defendant is without knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 15 of the Third-Party Complaint and, therefore, denies the same.
16. The third-party defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Third-Party Complaint and, therefore, denies the same.
17. The third-party defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Third-Party Complaint and, therefore, denies the same.
18. The third-party defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the Third-Party Complaint and, therefore, denies the same.
19. The third-party defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the Third-Party Complaint and, therefore, denies the same.
20. The third-party defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Third-Party Complaint and, therefore, denies the same.
21. The allegations contained in paragraph 21 of the Third-Party Complaint do not pertain to this third-party defendant, and thus, no response is required.
22. The allegations contained in paragraph 22 of the Third-Party Complaint constitute legal conclusions, rather than factual allegations and, therefore, no response is required. To the extent that a response is deemed necessary, the third-party defendant denies the allegations contained in this paragraph of the Third-Party Complaint.
23. The allegations contained in paragraph 23 of the Third-Party Complaint do not pertain to this third-party defendant, and thus, no response is required.
24. The allegations contained in paragraph 24 of the Third-Party Complaint do not pertain to this third-party defendant, and thus, no response is required.
25. The allegations contained in paragraph 25 of the Third-Party Complaint do not pertain to this third-party defendant, and thus, no response is required.

26. The third-party defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of the Third-Party Complaint and, therefore, denies the same.
27. The allegations contained in paragraph 27 of the Third-Party Complaint do not pertain to this third-party defendant, and thus, no response is required.
28. The allegations contained in paragraph 28 of the Third-Party Complaint do not pertain to this third-party defendant, and thus, no response is required.
29. The third-party defendant denies the allegations that pertain to R & R Window Contractors, Inc. contained in paragraph 29 of the Third-Party Complaint. The third-party defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the Third-Party Complaint and, therefore, denies the same.

### **COUNT I**

- 30-32. The allegations contained in paragraphs 30 through 32 of the Third-Party Complaint do not pertain to this third-party defendant, and thus, no response is required.

### **COUNT II**

33. The third-party defendant re-alleges and incorporates as if fully set forth herein its responses to paragraphs 1 through 32 of the Third-Party Complaint.
34. The third-party defendant denies the allegations set forth in paragraph 34 of the Third-Party Complaint.
35. The third-party defendant denies the allegations set forth in paragraph 35 of the Third-Party Complaint.

WHEREFORE the third-party defendant, having denied each and every allegation not specifically admitted above, denies that the third-party plaintiff is entitled to the relief requested in Count II of the Third-Party Complaint.

### **COUNT III**

- 36-38. The allegations contained in paragraphs 36 through 38 of the Third-Party Complaint do not pertain to this third-party defendant, and thus, no response is required.

**COUNT IV**

39-41. The allegations contained in paragraphs 39 through 41 of the Third-Party Complaint do not pertain to this third-party defendant, and thus, no response is required.

**COUNT V**

42-43. The allegations contained in paragraphs 42 and 43 of the Third-Party Complaint do not pertain to this third-party defendant, and thus, no response is required.

**COUNT VI**

- 44. The third-party defendant re-alleges and incorporates as if fully set forth herein its responses to paragraphs 1 through 43 of the Third-Party Complaint.
- 45. The third-party defendant denies the allegations set forth in paragraph 45 of the Third-Party Complaint.

WHEREFORE the third-party defendant, having denied each and every allegation not specifically admitted above, denies that the third-party plaintiff is entitled to the relief requested in Count VI of the Third-Party Complaint.

**COUNT VII**

46-47. The allegations contained in paragraphs 46 and 47 of the Third-Party Complaint do not pertain to this third-party defendant, and thus, no response is required.

**COUNT VIII**

48-49. The allegations contained in paragraphs 48 and 49 of the Third-Party Complaint do not pertain to this third-party defendant, and thus, no response is required.

WHEREFORE, the third-party defendant, having denied each and every allegation not specifically admitted above, denies that the third-party plaintiff is entitled to the judgment demanded in its Complaint.

**AFFIRMATIVE DEFENSES**

The Third-Party Defendant, R & R Window Contractors, Inc., having denied each allegation of the Third-Party Complaint not specifically admitted above, sets forth the following affirmative defenses:

### **FIRST AFFIRMATIVE DEFENSE**

The third-party plaintiff has failed to state a cause of action for which relief can be granted.

### **SECOND AFFIRMATIVE DEFENSE**

If the third-party plaintiff suffered damages as alleged, these damages were caused though the acts or omissions of third persons, for whose conduct the third-party defendant is in no way legally responsible.

### **THIRD AFFIRMATIVE DEFENSE**

The third-party defendant states that the conduct of the plaintiff and/or the third-party plaintiff caused or contributed to the cause of the damages of which the third-party plaintiff now complains, wherefore, the third-party plaintiff is barred from recovery in accordance with G.L. c. 231, §85.

### **FOURTH AFFIRMATIVE DEFENSE**

The third-party defendant states that the conduct of the plaintiff and/or the third-party plaintiff caused or contributed to the cause of the damages of which the third-party plaintiff now complains, wherefore, the third-party plaintiff's liability should be apportioned accordingly in accordance with G.L. c. 231, §85.

### **FIFTH AFFIRMATIVE DEFENSE**

If the third-party plaintiff suffered damages as alleged, these injuries were the result of superceding intervening causes, for which the third-party defendant is in no way liable.

### **SIXTH AFFIRMATIVE DEFENSE**

The third-party defendant states that the third-party plaintiff's claims are barred by reason of estoppel and/or waiver.

### **SEVENTH AFFIRMATIVE DEFENSE**

The third-party defendant states that the third-party plaintiff cannot recover from the third-party defendant because its alleged damages were the result of the failure of the plaintiff and/or third-party plaintiff to mitigate its damages.

**EIGHTH AFFIRMATIVE DEFENSE**

The third-party defendant states that to the extent the third-party plaintiff has released its claims against the third-party defendant, this action is barred.

**NINTH AFFIRMATIVE DEFENSE**

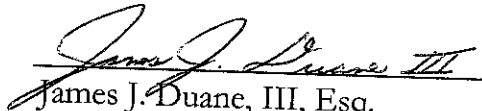
The third-party defendant states that the third-party plaintiff's claims against the third-party defendant are barred in whole or in part by the terms of an express and/or implied contract or agreement between the third-party plaintiff and the third-party defendant.

**TENTH AFFIRMATIVE DEFENSE**

The third-party defendant states that the third-party plaintiff is barred from recovery from this third-party defendant in accordance with G.L. c. 149, § 29C.

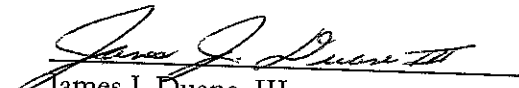
**THE THIRD-PARTY DEFENDANT, R & R WINDOW CONTRACTORS, INC.,  
DEMANDS A TRIAL BY JURY ON ALL ISSUES RAISED IN ITS ANSWER TO  
THE THIRD-PARTY COMPLAINT**

The Third-Party Defendant,  
R & R Window Contractors, Inc.  
By its Attorneys,

  
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**CERTIFICATE OF SERVICE**

I, James J. Duane, III, Esq. hereby certify that on this 31<sup>st</sup> day of March, 2004, I served a copy of the above pleading by mailing same, postage prepaid, to all counsel of record.

  
James J. Duane, III